IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 246 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANUBHAI MADHAVJI VAISHNAV - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR RJ OZA for Applicant(s) : 1,
Mr S S Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 27/12/2006

ORAL JUDGMENT

1. Invoking the provisions of sections 397 and 401 of the Criminal Procedure Code, 1973, the petitioner has approached this Court for setting aside the order

dated 4.8.1992 of the Addl.Sessions Judge, Bhavnagar in Criminal Appeal No.67 of 1986 confirming the judgment and order dated 6.8.1986 of the learned JMFC, Mahuva in Criminal Case No.1458 of 1984, by which the petitioner was convicted for the offences punishable under section 409 of IPC and sentenced to six months of rigorous imprisonment with fine of Rs.500/-, in default, simple imprisonment of one month.

2. Learned Counsel Mr R.J. Oza appearing for the petitioner submitted, without prejudice to the contentions of the petitioner in the present petition, that it was a fit case for taking a lenient view in the peculiar facts and circumstances of the case. Relying upon the affidavit of the petitioner submitted during the course of hearing, it was pointed out that, at the worst, the petitioner was held guilty of temporary misappropriation of Rs.3000/- for one day. Even as he was convicted and sentenced as aforesaid, he was initially taken into custody for one day and after rejection of the appeal, he had remained in custody for 14 days. On

the other hand, the employer-department of the petitioner had imposed penalty of withholding of two increments and suspended him from service from 11.8.1986 till the dismissal order dated 5.9.1986. Pursuant to his departmental appeal, the punishment was set aside on 9.1.1987. Upon rejection of his criminal appeal, the disciplinary authority of the employer again passed order dated 25.11.1992 dismissing him from service with effect from 1.12.1992. Thereafter, the Central Administrative Tribunal set aside the order of dismissal and the authorities were directed to reinstate the petitioner in service with all consequential benefits. Thus, the petitioner had come to be reinstated in service after several legal proceedings. During the course of one after the other legal battle, the petitioner has lost his only son aged 15 years and his daughters have reached marriageable age with all the incidental social responsibilities for the petitioner. Under the circumstance, the order of sentence and penalty was required to be modified in the interest of justice, according to his submission. Learned counsel Mr Oza, relied upon a judgment dated 8.2.1991

of this Court in Criminal Revision Application No.364/84 wherein the Court has observed, in similar circumstances, that after a long lapse of time, the imprisonment would serve no useful purpose and, therefore, the order of imprisonment for 15 days was set aside.

3. The Learned APP fairly conceded that the social milieu in which the offence was committed by the petitioner, the passage of very long time and the likelihood of further consequences for the petitioner in case he was required to undergo the remaining period of imprisonment, were required to be weighed, and, indeed the circumstances were serious enough to justify taking of a lenient view in the peculiar facts and circumstances. The learned APP submitted that, while setting aside the order of imprisonment for the remaining period, the amount of fine should be enhanced so as to maintain the deterrent effect of punishment in serious case of misappropriation.

4. In view of the above candid statement made by the petitioner and his Advocate, and having regard to

the attitude adopted by the petitioner throughout the proceedings and also the passage of about 22 years after the offence, the order of punishment is, without disturbing the factual findings and the conviction, modified to the extent that substantive sentence of rigorous imprisonment shall stand reduced to imprisonment for 15 days already undergone by the petitioner, and the amount of fine shall stand increased to Rs.5000/- in addition to the fine already paid by him. In case of failure to pay in the trial court within one month, the amount of fine, the petitioner shall undergo simple imprisonment for two months. The petition stands **allowed** to that extent and Rule is made absolute accordingly with no order as to costs.

[D. H. Waghela, J.]

msp